

ELDER AFFAIRS DEPARTMENT[321]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 231.14 and Iowa Code chapters 231E and 633, the Elder Affairs Department hereby gives Notice of Intended Action to adopt new Chapter 22, "Office of Substitute Decision Maker," Iowa Administrative Code.

This proposed new chapter implements the office of substitute decision maker as created in Iowa Code chapter 231E and establishes standards and procedures for those appointed as substitute decision makers. It also establishes the qualifications of consumers eligible for services.

Any interested person may make written suggestions or comments on the proposed rules on or before October 1, 2008. Such written suggestions or comments should be directed to the Department of Elder Affairs, Jessie M. Parker Building, 510 E. 12th Street, Des Moines, Iowa 50319; E-mailed to danika.rosales@iowa.gov; or faxed to (515)242-3300.

These rules are intended to implement Iowa Code chapters 231E and 633.

The following amendment is proposed.

Adopt the following **new** 321—Chapter 22:

CHAPTER 22 OFFICE OF SUBSTITUTE DECISION MAKER

321—22.1(231E,633) Purpose. This chapter implements the office of substitute decision maker as created in Iowa Code chapter 231E and establishes standards and procedures for those appointed as substitute decision makers. It also establishes the qualifications of consumers eligible for services.

321—22.2(231E,633) Definitions. Words and phrases used in this chapter are as defined in 321 IAC 1 unless the context indicates otherwise. The following definitions also apply to this chapter:

"*Active*" means assuming the role of attorney-in-fact upon the triggering event specified in a power of attorney document.

"*Assessment*" means a comprehensive, in-depth evaluation to identify an individual's current situation, ability to function, strengths, problems, and care needs in the following major functional areas: physical health, medical care utilization, activities of daily living, instrumental activities of daily living, mental and social functioning, financial resources, physical environment, and utilization of services and support.

"*Case opening*" means the internal administrative process used by the state office in establishing a temporary or ongoing case, including, but not limited to: collecting and reviewing necessary financial, legal, medical or social history information pertaining to the consumer or the consumer's estate; opening bank or other financial accounts on the consumer's behalf; assigning substitute decision makers to perform substitute decision-making responsibilities for the consumer; collecting and receiving property of the consumer; creating files, summaries and other documents necessary for the management of the consumer or the consumer's estate; and any other activities related to preparing for and assuming the responsibilities as a substitute decision maker.

"*Consumer*" as used in this chapter means any individual in need of substitute decision-making

services.

“*Court*” means the probate court having jurisdiction over the consumer.

“*Department*” means the department of elder affairs established in Iowa Code section 231.21.

“*Estate*” means all property owned by the consumer including, but not limited to: all cash, liquid assets, furniture, motor vehicles, and any other tangible personal and real property.

“*Fee*” or “*fees*” means any costs assessed by the state office against a consumer or a consumer’s estate for substitute decision-making services or a one-time case-opening fee for establishment of a case.

“*Fiduciary*” means the person or entity appointed as the consumer’s substitute decision maker and includes a person or entity acting as personal representative, guardian, conservator, representative payee, attorney-in-fact or trustee of any trust.

“*Financial hardship*” means a living consumer who has a total value in liquid assets below \$6,500; or the consumer’s estate proving otherwise inadequate to obtain or provide for physical or mental care or treatment, assistance, education, training, sustenance, housing, or other goods or services vital to the well-being of the consumer or the consumer’s dependents.

“*Inventory*” means a detailed list of the estate.

“*Liquid assets*” means the portion of a consumer’s estate comprised of cash, negotiable instruments, or other similar property that is readily convertible to cash and has a readily ascertainable fixed value, including but not limited to: savings accounts, checking accounts, certificates of deposit, money market accounts, corporate or municipal bonds, U.S. savings bonds, stocks or other negotiable securities, and mutual fund shares.

“*Net proceeds*” means the value of the property at the time of sale minus taxes, commissions and other necessary expenses.

“*Program*” means the services offered by the office of substitute decision maker.

“*Record*” means any information obtained by the state or local office in the performance of its duties.

“*Substitute decision maker*” or “*SDM*” means a person providing substitute decision-making services pursuant to Iowa Code chapter 231E.

321—22.3(231E,633) Substitute decision maker qualifications. All SDMs shall have graduated from an accredited four-year college or university and shall be certified by the National Guardianship Association within 12 months of assuming duties as an SDM. This certification shall be kept current while the person is serving as an SDM.

321—22.4(231E,633) Ethics and standards of practice. The state office adopts the National Guardianship Association Standards of Practice adopted in 2000, including any subsequent amendments thereto, as a statement of the best practices and the highest quality of practice for persons serving as guardians or conservators. The adoption of standards of practice in this document is not intended to amend or diminish the statutory scheme, but rather to supplement and enhance the understanding of the statutory obligations to be met by the SDM when serving as an SDM. Subsequent to appointment to serve a consumer, the SDM shall perform all duties imposed by the court or other entity having jurisdiction and imposed by applicable law and, as appropriate, shall utilize standards found in the most current edition of the National Guardianship Association Standards of Practice.

321—22.5(231E,633) Staffing ratio. SDMs shall be responsible for no more than ten consumers per full-time equivalent position at any one time. The state office shall notify the state court administrator when the maximum number of appointments is reached.

22.5(1) In its sole discretion, if the state office determines that due to the complexity of current cases SDMs would have significant difficulty meeting the needs of consumers, the state office may choose to temporarily suspend acceptance of appointments. The state office shall notify the state court administrator of the suspension of services

22.5(2) In the state office's sole discretion, the SDM may exceed staffing ratios under the following circumstances:

- a. A priority situation exists as defined in subrule 22.7(2), and
- b. Acceptance of case(s) will not adversely affect services to current consumers.

321—22.6(231E,633) Conflict of interest—state office. A conflict of interest arises when the SDM has any personal or agency interest that is or may be perceived as self-serving or adverse to the position or best interest of the ward. When assigning a consumer to an SDM, all reasonable efforts shall be made to avoid an actual conflict of interest or the appearance of a conflict of interest.

22.6(1) The assigned SDM shall not:

- a. Provide direct services to the consumer receiving substitute decision-making services;
- b. Have an affiliation with or financial interest in the consumer's estate;
- c. Employ friends or family to provide services for a fee; or
- d. Solicit or accept incentives from service providers.

22.6(2) The SDM shall be independent from all service providers, thus ensuring that the SDM remains free to challenge inappropriate or poorly delivered services and to advocate on behalf of the ward.

321—22.7(231E,633) Consumers eligible for services. The state office shall seek to restrict appointments to only those necessary. The state office will not accept an appointment based upon a voluntary petition.

22.7(1) In order to qualify for services, the consumer shall meet all of the following criteria:

- a. A resident of the state of Iowa;
- b. Aged 18 or older;
- c. Does not have a willing and responsible fiduciary to serve as an SDM;
- d. Capable of benefiting from the services of an SDM;
- e. Receipt of SDM services is in the best interest of the consumer; and
- f. No alternative SDM resources are available.

22.7(2) The following cases shall be given priority:

- a. Those involving abuse, neglect or exploitation;
- b. Those in which a critical medical decision must be made; or
- c. Any situation which may cause serious or irreparable harm to the consumer's mental or physical health or estate.

321—22.8(231E,633) Application and intake process—guardianship, conservatorship, representative payee and personal representative.

22.8(1) Any person may request an application for services. Applications are available through the state office. Completed applications shall be submitted to the Office of Substitute Decision Maker, Jessie M. Parker Building, 510 East 12th Street, Suite 2, Des Moines, Iowa 50319-9025. Incomplete applications will not be considered. Communication with the state office or the submission of an application does not imply an appointment and does not create any type of fiduciary relationship between the state office and the consumer.

22.8(2) The state office shall make a determination regarding eligibility of the consumer and acceptance or denial of the case based on a review of the completed application.

22.8(3) The state office shall grant or deny an application for services as soon as practicable, but, in any event, shall do so within 60 days of receipt of the application.

22.8(4) Failure of the state office to grant or deny an application within the specified time period shall be deemed a denial of the application by the state office.

321—22.9(231E,633) Application and intake process—power of attorney.

22.9(1) Any power of attorney that names the state office as attorney-in-fact is not effective unless the state office consents to such appointment.

22.9(2) Any person may request an application for services. Applications are available through the state office. Completed applications shall be submitted to the Office of Substitute Decision Maker, Jessie M. Parker Building, 510 East 12th Street, Suite 2, Des Moines, Iowa 50319-9025. Incomplete applications will not be considered. Communication with the state office or the submission of an application does not imply an appointment and does not create any type of fiduciary relationship between the state office and the consumer.

22.9(3) The state office shall make a determination regarding eligibility of the consumer and acceptance or denial of the case based on a review of the completed application.

22.9(4) The state office shall grant or deny an application for services as soon as practicable, but, in any event, shall do so within 60 days of receipt of the application.

22.9(5) Failure of the state office to grant or deny an application within the specified time period shall be deemed a denial of the application by the state office.

321—22.10(231E,633) Case records.

22.10(1) A case record must be established for each consumer. At a minimum, the case record must contain:

- a. Copies of the assessments, medical records, and updates, if any;
- b. A separate financial management folder containing an inventory, individual financial management plan, a record of all financial transactions made on behalf of the consumer by the SDM, copies of receipts for all expenditures made by the SDM on behalf of the consumer, and copies of all other documents pertaining to the consumer's financial situation as required by the state office;
- c. Itemized statements of costs incurred in the provision of services for which the SDM received court-authorized reimbursement directly from the consumer's estate; and
- d. Other information as required by the state office.

22.10(2) All case records maintained by the SDM shall be confidential as provided in Iowa Code section 231E.4(6) "g."

321—22.11(231E,633) Confidentiality. Notwithstanding Iowa Code chapter 22, the following provisions shall apply to records obtained by SDMs in the course of their duties.

22.11(1) Records or information obtained for use by an SDM is confidential. All records or information obtained from federal, state or local agencies and health or mental care service providers shall be managed by the state office with the same degree of confidentiality required by law or the policy utilized by the entity having control of such records or information. Such records or information shall not be disseminated without written permission from the entity having control of such records or information.

22.11(2) In its sole discretion, the state office may disclose a record obtained in the performance of its duties if release of the record is necessary and in the best interest of the consumer. Disclosure of a record under this rule does not affect the confidential nature of the record.

22.11(3) Information may be redacted so that personally identifiable information is kept confidential.

22.11(4) Confidential information may be disclosed to employees and agents of the department as needed for the performance of their duties. The state office shall determine what constitutes legitimate need to use confidential records. Individuals affected by this rule may include paid staff and volunteers working under the direction of the department and commission members.

22.11(5) Information concerning program expenditures and client eligibility may be released to staff of the state executive and legislative branches who are responsible for ensuring that public funds have been managed correctly. This same information may also be released to auditors from federal agencies when those agencies provide program funds.

22.11(6) The state office may enter into contracts or agreements with public or private entities in order to carry out the state office's official duties. Information necessary to carry out these duties may be shared with these entities. The state office may disclose protected health information to an entity under contract and may allow an entity to create or receive protected health information on the state

office's behalf if the state office obtains satisfactory assurance that the entity will appropriately safeguard the information.

22.11(7) Release for judicial and administrative proceedings.

- a. Information shall be released to the court as required by law.
- b. The state office shall disclose protected health information in the course of any judicial or administrative proceeding in response to an order of a court or administrative tribunal. The state office shall disclose only the protected health information expressly authorized by the order and when the court makes the order knowing that the information is confidential.
- c. If a court subpoenas other information that the state office is prohibited from releasing, the state office shall advise the court of the statutory and regulatory provisions against disclosure of the information and shall disclose the information only on order of the court.

22.11(8) Information concerning suspected fraud or misrepresentation in order to obtain SDM services or assistance may be disclosed to law enforcement authorities.

22.11(9) Information concerning consumers may be shared with service providers under contract.

a. Information concerning the consumer's circumstances and need for services may be shared with prospective service providers to obtain placement for the consumer. If the consumer is not accepted for service, all written information released to the service provider shall be returned to the state office.

b. When the information needed by the service provider is mental health information or substance abuse information, the consumer's specific consent is required.

22.11(10) After the state office receives a request for access to a confidential record, and before the state office releases such a record, the state office may make reasonable efforts to promptly notify any person who is a subject of that record, who is identified in that record, or whose address or telephone number is contained in that record. To the extent such a delay is practicable and in the public interest, the custodian may give the subject of such a confidential record to whom notification is transmitted a reasonable opportunity to seek an injunction under Iowa Code section 22.8, and indicate to the subject of the record the specific period of time during which disclosure will be delayed for that purpose.

321—22.12(231E,633) Termination or limitation. Either an SDM or the state office may seek the termination or limitation of an SDM's duties under circumstances including but not limited to the following:

1. The SDM's services are no longer needed or do not benefit the consumer;
2. The consumer's assets allow for hiring a paid substitute decision maker;
3. A conflict of interest or the appearance of a conflict of interest arises;
4. The state office lacks adequate staff or financial resources;
5. The consumer moves outside the service area;
6. The state office is no longer the last resort for assistance;
7. The SDM withdraws from the service agreement;
8. Termination of the program by law; or
9. Other circumstances which indicate a need for termination or limitation.

321—22.13(231E,633) Service fees.

22.13(1) The state SDM and local SDM shall be entitled to reasonable compensation for their substitute decision-making services as determined by using the following criteria:

- a. Such compensation shall not exceed actual costs.
- b. Fees may be adjusted or waived based upon the ability of the consumer to pay, upon whether financial hardship to the consumer would result, or upon a finding that collection of such fees is not economically feasible.
- c. Fees shall be as established in rule 22.14(231E,633). The state office may collect a fee from the estate of a deceased consumer.

22.13(2) Fees shall not be assessed on income or support derived from Medicaid. Income or

support derived from Social Security and other federal benefits shall be subject to assessment unless the funds have been expressly designated for another purpose. Written notice shall be given to the consumer prior to the collection of fees. The written notice shall describe the type and amount of fees assessed.

22.13(3) Case-opening fees. All consumers, except those receiving representative payee services, with liquid assets valued at \$6,500 or more on the date of the SDM's appointment shall be assessed a one-time case-opening fee for establishment of the case by the state office. Case-opening fees shall be assessed for each appointment, including a reappointment more than six months after the termination of a prior appointment as SDM for the same consumer which involves similar powers and duties.

22.13(4) Monthly fees.

a. A monthly fee for SDM services other than the sale or management of real or personal property shall be assessed against all consumers with liquid assets valued at \$6,500 or more on any one day during the month. Monthly fees shall be collected by the state office on a pro rata basis on the first of each month. A monthly fee shall be assessed when an SDM is appointed to guardianship, conservatorship, or representative payee duties.

b. Under a power of attorney, monthly fees shall be assessed once the state office assumes an active role as attorney-in-fact. The state office shall evaluate a consumer's estate annually or as necessary to determine the need for an increase or decrease in the monthly fee.

c. In all cases where the state office serves as representative payee under programs administered by the Social Security Administration, Railroad Retirement Board, or similar programs, the monthly fee for providing representative payee services shall be as established by the federal governmental agency which appoints the representative payee.

22.13(5) Additional fees.

a. Fees for the sale of a consumer's real or personal property shall be in addition to case-opening and monthly service fees.

b. Fees for the sale of real or personal property shall be 10 percent of the net proceeds resulting from the sale of the property and shall be paid at the time the sale is completed.

c. Such further allowances as are just and reasonable may be made by the court to SDMs for actual, necessary and extraordinary expenses and services.

22.13(6) Preparation and filing of state or federal income tax returns. Fees for the preparation and filing of a consumer's state or federal income tax return may be assessed at the time of filing of a return for each tax year in which a return is filed.

22.13(7) Settlement of a personal injury cause of action. Fees for the settlement of a consumer's personal injury cause of action may be collected upon court approval of the settlement.

22.13(8) Establishment of a recognized trust. Fees for establishing a recognized trust for the purpose of conserving or protecting a consumer's estate and for petitioning the court for the approval of the trust may be collected at the time of court approval of establishment of the trust.

22.13(9) Extraordinary expenses and services. The state office may collect fees pursuant to court order for other actual, necessary and extraordinary expenses or services. Necessary and extraordinary services shall be construed to also include services in connection with real estate, tax matters, and litigated matters.

22.13(10) Impact on creditors. The state office may collect fees even when claims of creditors of the consumer may be compromised.

321—22.14(231E,633) Fee schedule. The following fees are applicable to services provided by an SDM unless reduced or waived pursuant to paragraph 22.13(1) "b."

Action or Responsibility	Fee
One-time case opening:	\$200
Guardianship	\$300
Conservatorship	\$500

Guardianship and conservatorship	\$ 60
Durable power of attorney for health care	\$100
Durable power of attorney for financial matters	\$160
Power of attorney for health care and financial matters	
Monthly SDM services for conservator, durable power of attorney for health care and general power of attorney for financial matters.	\$100
Total value of liquid assets:	\$125
\$ 6,500 – \$ 9,999	\$150
\$10,000 – \$19,999	\$175
\$20,000 – \$29,999	\$200
\$30,000 – \$39,999	\$225
\$40,000 – \$49,999	\$250
\$50,000 – \$59,999	\$275
\$60,000 – \$69,999	\$300
\$70,000 – \$79,999	\$325
\$80,000 – \$89,999	\$350
\$90,000 – \$99,999	
\$100,000 or above	
Personal representative	As determined by Iowa Code section 633.197
Preparation and filing of income tax returns:	\$ 50
Each federal return	\$ 25
Each state return	
Settlement of a personal injury cause of action:	\$250
Each cause of action approved by the probate court	
Establishment of a recognized trust for the consumer's financial estate.	\$250
Each trust	
Representative payee—monthly fee	As determined by the federal governmental agency that appoints the representative payee

321—22.15(231E,633) Denial of services—appeal. An appeal from a consumer regarding denial of services shall be made pursuant to 321 IAC 13.

321—22.16(231E,633) Contesting the actions of a guardian or conservator.

22.16(1) Consumers who wish to contest the actions of a guardian or conservator may express their concerns to the state office in writing or verbally.

22.16(2) Within two working days of receipt of the concern, the state office shall notify the consumer of its decision to uphold or change the course of action taken by the guardian or conservator. The state office shall notify the consumer both verbally and in writing.

22.16(3) The state office shall explain to the consumer, in a manner that the consumer fully understands, that the consumer has the right to counsel and the right to appeal the state office's decision pursuant to 321 IAC 13.

321—22.17(231E,633) Contesting the actions of an attorney-in-fact.

22.17(1) Consumers who wish to contest the actions of an attorney-in-fact may express their concerns to the state office in writing or verbally.

22.17(2) Within two working days of receipt of the concern, the state office shall notify the consumer of its decision to uphold or change the course of action taken by the attorney-in-fact. The state office shall notify the consumer both verbally and in writing.

22.17(3) The state office shall explain to the consumer, in a manner that the consumer fully understands, that the consumer has the right to counsel and the right to appeal the state office's

decision pursuant to 321 IAC 13.

22.17(4) The consumer shall be informed by the attorney-in-fact that the consumer always has the right to revoke the power of attorney or to a change of attorney-in-fact.

321—22.18(231E,633) Severability. Should any rule, subrule, paragraph, phrase, sentence or clause of this chapter be declared invalid or unconstitutional for any reason, the remainder of this chapter shall not be affected thereby.

These rules are intended to implement Iowa Code chapters 231E and 633.